

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

JAVIER TAMES, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

DESARROLLADORA HOMEX, S.A.B.
DE C.V. a/k/a HOMEX DEVELOPMENT
CORP., GERARDO DE NICOLÁS
GUTIÉRREZ, and CARLOS
MOCTEZUMA VELASCO,

Defendant.

Case No.: 2:17-cv-01416-JMA-ARL

Hon. Judge Joan M. Azrack

Hon. Magistrate Judge Arlene R. Lindsay.

**LEAD PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND PLAN
OF ALLOCATION OF SETTLEMENT
PROCEEDS**

ORAL ARGUMENT REQUESTED

**TO THE CLERK OF THE COURT AND ALL PARTIES AND THEIR COUNSEL
OF RECORD:**

Pursuant to the Court's Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, Setting Date for Hearing on Final Approval of Settlement (Dkt. No. 25) (the "Preliminary Approval Order"), on September 16, 2020, at 9:00 a.m. in Courtroom 920 at the United States District Court for the Eastern District of New York, 100 Federal Plaza, Central Islip, New York 11722, the Honorable Joan M. Azrack, presiding, Lead Plaintiff Jose Acosta ("Lead Plaintiff"), by and through his counsel, Levi & Korsinsky, LLP, will and hereby do move this Court, under Rule 23 of the Federal Rules of Civil Procedure, for entry of an order: (i) granting final approval of the proposed class action Settlement; (ii) approving of the proposed Plan of Allocation; and (iii) certifying the proposed class for the purpose of the Settlement.

This motion is based upon the Lead Plaintiff's Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement and Plan of Allocation of Settlement Proceeds; the declarations of Adam M. Apton, Steven R. Platt, and Lead Plaintiff Jose Acosta; the record and proceedings in this Action; and such matters as the Court may consider at the time of the hearing.

Lead Plaintiff submits the [Proposed] Final and Judgment in connection with this motion.

YOUR HONOR’S INDIVIDUAL RULES

This motion is filed in accordance with the schedule set by the Preliminary Approval Order entered on May 22, 2020 by the Honorable Arthur D. Spatt. Paragraph 21 of the Preliminary Approval Order provided that “[a]ll papers in support of the Settlement, Plan of Allocation, and Lead Counsel’s request for an award of attorneys’ fees and expenses shall be filed with the Court and served on or before thirty-five (35) calendar days prior to the date set herein for the Settlement Hearing.” Defendant Homex¹ has agreed to agree promptly upon and execute all such other documentation as reasonably may be required to obtain Final approval by the Court of the Settlement.” Stipulation ¶62. Furthermore, the Stipulation provides that Defendant Homex will take no position on the Plan of Allocation. *See* Stipulation ¶23. Accordingly, Lead Counsel does not anticipate any response from Defendant Homex to this motion. For the foregoing reasons, Lead Plaintiff and Lead Counsel respectfully request that Rule IV.B and Rule IV.F.1 and 2 of your Honor’s Individual Rules be waived for this motion.

DATED: August 12, 2020

Respectfully submitted,

/s/ Adam Apton
Nicholas I. Porritt
Adam M. Apton
LEVI & KORSINSKY, LLP
55 Broadway 10th Floor
New York, NY 10006
Telephone: 212-363-7500
Facsimile: 212-363-7171

*Attorneys for Lead Plaintiff Jose Acosta and Lead
Counsel for the Proposed Class*

¹ Unless otherwise noted, capitalized terms have the meanings set forth in the Stipulation of Settlement dated May 5, 2020 (ECF No. 23, the “Stipulation”).